

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

**LOWELL DEAN, JUAN ECHEGARAY,
JIMMY GOBLE, JAMES HALL, KENNETH
LAWS, ADAM MCCLUNG, MARSHALL
MARTIN, JIMMY MAYNARD, JR.,
JOSHUA MEADE, et al.,**

Plaintiffs,

v.

Case No. 2:13-cv-2485

**KENTUCKY FUEL CORPORATION,
SOUTHERN COAL COMPANY, and
ANTHEM BLUE CROSS,**

Defendants.

VERIFIED SUPPLEMENTAL MOTION TO APPROVE SETTLEMENT

COME NOW Plaintiffs Jimmie Maynard, Jr., Juan Echegaray, Kenneth Laws, Marshall Martin, Wallace Meade, Johnny Paige, Jimmy Payne, Albert Smith, II, Bobby Ward, and Jeffrey Wolford; all of whom had family coverage that applied to their minor beneficiaries (sometimes hereinafter referred to as “Petitioners”) under the Southern Coal Health Care Plan (the “Plan”), and in addition to the information previously provided within their “Verified Motion to Approve Settlement” in this matter also represent as follows:

1. Petitioners are the natural parents and/or legal guardians of the minor children identified below¹, and seek the approval by this Court of a settlement for their minor children, pursuant to the provisions of West Virginia Code § 44-10-14.

¹ Petitioners are submitting this “Verified Supplemental Motion to Approve Settlement” (“Supplemental Motion”) in addition to their previous “Verified Motion to Approve Settlement” that was filed on October 22, 2013. The purpose of this Supplemental Motion is to withdraw the names of Dustin Paige and Andrew Hunter Paige who were mistakenly identified as minor beneficiaries in this matter. The Petitioners further submit this Supplemental Motion is to clarify the proportion of the beneficiary payment that each of the minor Paige children is entitled to receive.

- a. Petitioner Jimmie Maynard, Jr. is the parent (father) and/or legal guardian of Jaxson Maynard², a male child born on December 3, 2004, and 8 years of age; and Abigail Maynard, a female child born on January 3, 2008, and 5 years of age.
- b. Petitioner Juan Echegaray is the parent (father) and/or legal guardian of Chelsea Echegaray, a female child born on 1/29/04, and 9 years of age; Kaitlyn Echegaray, a female child born on 4/11/08, and 5 years of age; Naomi, Echegaray, a female child born on 10/12/98, and 15 years of age; Colby Echegaray, a male child born on 3/29/01, and 12 years of age; Jaret Echegaray, a male child born on 9/21/05, and 7 years of age; and Juan Echegaray, a male child born on 9/5/01, and 11 years of age.
- c. Petitioner Kenneth Laws is the parent (father) and/or legal guardian of Kenna Laws, a female child born on 1/18/00, and 13 years of age.
- d. Petitioner Marshall Martin is the parent (father) and/or legal guardian of Cierra Holcomb, a female child born on 7/15/02, and 11 years of age; and Zachery Holcomb, a male child born on 7/19/09, and 4 years of age.
- e. Petitioner Wallace Meade is the parent (father) and/or legal guardian of Jenna Meade³, a female child born on 7/7/99, and 14 years of age.
- f. Petitioner Johnny Paige is the parent (father) and/or legal guardian of Johnny Paige, Jr., a male child born on 10/19/02, and 11 years of age;

Finally, for this Court's convenience, the Petitioners are submitting a revised proposed Order reflecting these changes.

² Although the Plan's records identify Mr. Maynard, Jr.'s son as "Jayson Maynard," the correct spelling of the minor child's name is Jaxson.

³ Although the Plan's records identify Mr. Meade's daughter as "Tenna," the correct spelling of the minor child's name is "Jenna."

Andrew Paige, a male child born on 5/7/04, and 9 years of age; and Christopher Walker, a male child born on 6/22/99, and 14 years of age.

- g. Petitioner Jimmy Payne is the parent (father) and/or legal guardian of Hanna Payne, a female child born on 5/6/06, and 7 years of age; and Makayla Payne, a female child born on 8/17/04, and 9 years of age.
- h. Petitioner Albert Smith, II is the parent (father) and/or legal guardian of Alexis Hill, a male child born on 3/24/03, and 10 years of age; Brandon Hill, a male child born on 1/23/00, and 13 years of age; and Riley Smith, a female child born on 1/8/08, and 5 years of age.
- i. Petitioner Bobby Ward is the parent and/or legal guardian of Brandon Ward, a male child born on 6/16/03, and 10 years of age.
- j. Petitioner Jeffrey Wolford is the parent and/or legal guardian of Zachary Wolford a male child born on 8/27/10, and 3 years of age.

2. Petitioners in this case (hereinafter referred to as the “Dean Lawsuit”) are former employees of Kentucky Fuel who were laid off on or about January 14, 2012. Prior to their layoff from employment, Petitioners were enrolled to receive family coverage under the Plan. On May 22, 2013, Petitioners (as well as other former employees who did not have coverage under the Plan) filed this matter in the United States District Court for the Southern District of West Virginia, as Civil Action Number 2:13-2485. Southern Coal Corporation (“Southern Coal”) and Anthem Health Plan of Kentucky, Inc. d/b/a Anthem Blue Cross Blue Shield (“Anthem”) are also Defendants in this matter. In their Class Action Complaint, Petitioners allege that they (and their qualified beneficiaries, including spouses and children) did not receive timely notices under COBRA, 29 U.S.C. § 1161 *et seq.* Plaintiffs, who include but are not

limited to Petitioners, sought statutory damages for the delayed notices, and reimbursement for certain medical expenses, as well as attorneys' fees.

3. Similarly, *Bartley et al, v. Kentucky Fuel Corporation*, Civil Action No. 1:12-CV-00965, (hereinafter referred to as the "Bartley Lawsuit"), involves the same issues as the Dean Lawsuit. Specifically, the plaintiffs in the Bartley Lawsuit are also former employees of Kentucky Fuel who were laid off on or about January 14, 2012 and who allege they also did not receive timely notices under COBRA and who seek the same type of relief as Plaintiffs here.

4. Plaintiffs, in both the Bartley Lawsuit and the Dean Lawsuit, who include but are not limited to Petitioners, have negotiated a settlement with Kentucky Fuel, Southern Coal and Anthem to resolve the claims of the Plaintiffs in both the Bartley Lawsuit and the Dean Lawsuit (and the claims of all of their dependents who were beneficiaries under the Plan). As part of the settlement, a Beneficiary Payment is to be issued in the form of a single check for the benefit of all the beneficiaries of each Petitioner here (and each similarly-situated Petitioner in the Bartley Lawsuit) for the total amount of Five Hundred Dollars (\$500.00). These checks will be made out to each Petitioner and his spouse, where applicable, or as otherwise ordered or approved by the District Court. Consequently, each of the aforementioned minor children is entitled to a proportional share of the Five Hundred Dollars (\$500.00) amount to be issued to his/her parent and/or legal guardian.

5. Petitioners believe that the proposed settlement is fair and reasonable and that it would be in the best interest of the minor children, and, therefore, respectfully request this Court for authority to accept said settlements in compromise of the claims described herein for the following reasons:

- a. The claims at issue here and in the Bartley Lawsuit are contested by all parties;
- b. This is the best compromise that can be obtained;
- c. Petitioners believe the settlement is in the best interests of the minor children;
- d. Petitioners also believe that it is in the best interests of the minor children that the Court authorize the settlement as to the minor children as described herein;
- e. That, in the event that liability is established in the Dean Lawsuit, there is no certainty that the remedy that might be awarded by the Court would be larger than the sum of money offered herein;
- f. The settlement negotiated by the parties in the Dean Lawsuit and the Bartley Lawsuit, which includes Petitioners here, was negotiated at arm's length, includes all Plaintiffs in both cases as well as all of their dependents (spouses and children) who were covered by the Plan, and that settlement is contingent on settlement of the claims of all of these Plaintiffs and these dependents, including the minor children who are the subject of this Petition.
- g. Todd S. Bailess, Esq., Joy B. Mega, Esq., Gregory B. Chiartas, Esq., Rodney A. Smith, Esq. and Jonathan R. Marshall, Esq., counsel for Petitioners, who are the parents and/or legal natural guardians of the minor children who are the subject of this Petition, have recommended that they accept this settlement.

6. Therefore, Petitioners pray that, pursuant to the provisions of West Virginia Code § 44-10-14, a single Guardian *ad Litem* be appointed for all the minor children identified herein and in the “Verified Motion to Approve Settlement” pending in the Bartley Lawsuit, which has settlement terms that are identical to this matter. The parties to both the Bartley Lawsuit and the Dean Lawsuit, which includes the Petitioners here, believe that a single Guardian *ad Litem* can be appointed to represent and evaluate the interests of all the minor children from both cases. As relates to the minor children, the only matter at issue would be potential “notice” violations under COBRA. No minor children suffered any type of actual injury as a result of the claims at issue, and the minor children are not in any way obligated for any medical expenses that may have been incurred on their behalf.

7. Petitioners further pray that Petitioners, each in their capacity as parent and/or legal guardian of the minor children, be authorized to complete said settlement with Kentucky Fuel, Southern Coal and Anthem; that the settlements be accepted by the Petitioners in full and complete settlement of all claims of every kind and character that have been or could have been asserted in the Bartley Lawsuit and the Dean Lawsuit, including any and all claims under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, COBRA, and the Plan; and that Petitioners be authorized to execute and deliver to Kentucky Fuel, Southern Coal, and Anthem full and final releases of any and all claims that said minor children may have had in connection with these lawsuits, a copy of which will be made available to the Guardian *Ad Litem* appointed by the Court in accordance with the terms of the Confidential Settlement Agreement.

8. Petitioners state that the Beneficiary Payment should be held and applied in the following regards:

- a. Jaxson Maynard shall receive approximately half of the \$500 Beneficiary Payment issued to Petitioner Jimmie Maynard, Jr. on behalf of his beneficiaries.
- b. Abigail Maynard shall receive approximately half of the \$500 Beneficiary Payment issued to Petitioner Jimmie Maynard, Jr. on behalf of his beneficiaries.
- c. Chelsea Echegaray shall receive approximately one-eighth of the \$500 Beneficiary Payment issued to Petitioner Juan Echegaray and his spouse, if applicable, on behalf of his beneficiaries.
- d. Kaitlyn Echegaray shall receive approximately one-eighth of the \$500 Beneficiary Payment issued to Petitioner Juan Echegaray and his spouse, if applicable, on behalf of his beneficiaries.
- e. Naomi, Echegaray shall receive approximately one-eighth of the \$500 Beneficiary Payment issued to Petitioner Juan Echegaray and his spouse, if applicable, on behalf of his beneficiaries.
- f. Colby Echegaray shall receive approximately one-eighth of the \$500 Beneficiary Payment issued to Petitioner Juan Echegaray and his spouse, if applicable, on behalf of his beneficiaries.
- g. Jaret Echegaray shall receive approximately one-eighth of the \$500 Beneficiary Payment issued to Petitioner Juan Echegaray and his spouse, if applicable, on behalf of his beneficiaries.

- h. Juan Echegaray shall receive approximately one-eighth of the \$500 Beneficiary Payment issued to Petitioner Juan Echegaray and his spouse, if applicable, on behalf of his beneficiaries.
- i. Kenna Laws shall receive approximately one-third of the \$500 Beneficiary Payment issued to Petitioner Kenneth Laws and his spouse, if applicable, on behalf of his beneficiaries.
- j. Cierra Holcomb shall receive approximately one-third of the \$500 Beneficiary Payment issued to Petitioner Marshall Martin and his spouse, if applicable, on behalf of his beneficiaries.
- k. Zachery Holcomb shall receive approximately one-third of the \$500 Beneficiary Payment issued to Petitioner Marshall Martin and his spouse, if applicable, on behalf of his beneficiaries.
- l. Jenna Meade shall receive approximately half of the \$500 Beneficiary Payment issued to Petitioner Wallace Meade and his spouse, if applicable, on behalf of his beneficiaries.
- m. Johnny Paige, Jr. shall receive approximately one-fourth of the \$500 Beneficiary Payment issued to Petitioner Johnny Paige and his spouse, if applicable, on behalf of his beneficiaries.
- n. Andrew Paige shall receive approximately one-fourth of the \$500 Beneficiary Payment issued to Petitioner Johnny Paige and his spouse, if applicable, on behalf of his beneficiaries.

- o. Christopher Walker shall receive approximately one-fourth of the \$500 Beneficiary Payment issued to Petitioner Johnny Paige and his spouse, if applicable, on behalf of his beneficiaries.
- p. Hanna Payne shall receive approximately one-third of the \$500 Beneficiary Payment issued to Petitioner Jimmy Payne and his spouse, if applicable, on behalf of his beneficiaries.
- q. Makayla Payne shall receive approximately one-third of the \$500 Beneficiary Payment issued to Petitioner Jimmy Payne and his spouse, if applicable, on behalf of his beneficiaries.
- r. Alexis Hill shall receive approximately one-fourth of the \$500 Beneficiary Payment issued to Petitioner Albert Smith, II and his spouse, if applicable, on behalf of his beneficiaries.
- s. Brandon Hill shall receive approximately one-fourth of the \$500 Beneficiary Payment issued to Petitioner Albert Smith, II and his spouse, if applicable, on behalf of his beneficiaries.
- t. Riley Smith shall receive approximately one-fourth of the \$500 Beneficiary Payment issued to Petitioner Albert Smith, II and his spouse, if applicable, on behalf of his beneficiaries.
- u. Brandon Ward shall receive approximately half of the \$500 Beneficiary Payment issued to Petitioner Bobby Ward and his spouse, if applicable, on behalf of his beneficiaries.

- v. Lora Ward shall receive approximately half of the \$500 Beneficiary Payment issued to Petitioner James Ward and his spouse, if applicable, on behalf of his beneficiaries.
- w. Zachary Wolford shall receive approximately half of the \$500 Beneficiary Payment issued to Petitioner Jeffrey Wolford and his spouse, if applicable, on behalf of his beneficiaries.

Each Petitioners' spouse and/or adult children will receive the amounts of the Beneficiary Payment not otherwise held and applied for their minor children in accordance with the foregoing.

9. Petitioners are of the opinion and believe that the distribution as set out above is fair, just, and reasonable, and in the best interests of the minor children.

WHEREFORE, Petitioners request that the Court appoint a Guardian *ad Litem* who will be able to represent and evaluate the interests of the minor children in the Bartley Lawsuit and the Dean Lawsuit. Petitioners further request that the Court approve this compromise and settlement upon their application as parents and/or legal guardians of the minor children in question, and that the Court make findings regarding the formal qualification of Petitioners as guardians.

Minor Children Beneficiaries of Southern Coal Health Care Plan, by and through Petitioners, who are their parents and/or legal guardians

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